

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

BRENDA SANTOS, INDIVIDUALLY
AND AS NEXT FRIEND OF N.S.,
A MINOR CHILD
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

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Civil Action 2:21-cv-16

COMPLAINT

NOW COMES BRENDA SANTOS, INDIVIDUALLY AND AS NEXT FRIEND OF
N.S., A MINOR CHILD, Plaintiffs herein, complaining of the UNITED STATES OF
AMERICA, Defendant herein, and would show the Court as follows:

PARTIES

1. Plaintiff BRENDA SANTOS and Minor Plaintiff, N.S., A MINOR CHILD are
residents of Eagle Pass, Maverick County, Texas.

2. Defendant, UNITED STATES OF AMERICA, may be served with process in
accordance with Rule 4(i)(1)(A) of the Federal Rules of Civil Procedure by serving a copy of the
Summons and Plaintiffs' Complaint by certified mail, return receipt requested:

(1) United States Attorney for the Western District of Texas, Ms. Ashley C. Hoff, at the
United States Attorney's Office, Western District of Texas, at the United States
Attorney's mailing address, U.S. District Clerk's Office, 655 E. Cesar E. Chavez Blvd.,
Room G65, San Antonio, Texas 78206, to the attention of the Civil Process Clerk;

(2) Office of the Attorney General, U.S. Department of Justice, 10th & Constitutional Avenue, NW, Washington, DC 20530-0001, to the attention of the Civil Process Clerk;

(3) Office of General Counsel, CG-3, 15th floor, United States Marshals Service, Landover Operations Center, 3601 Pennsy Dr., Landover, MD 20785, attention Janice Tate.

JURISDICTION AND VENUE

3. This lawsuit is in action arising out of bodily injuries caused by an employee of the Marshals Office. This federal District Court has jurisdiction pursuant to and in compliance with 28 U.S.C. §§1346(b) and 2679(b) (1).

4. Venue: The acts and omissions complained of in the lawsuit occurred in the judicial district in which this Court sits, and venue is proper in the Western District of Texas under 28 U.S.C. §1402(b).

5. Pursuant to 28 U.S.C. § 2672 and §2675(a), the Plaintiffs plead that the claims set forth herein were filled with and presented administratively to the United States Marshals Service by Standard Form 95. Accordingly, the Plaintiffs have complied with all jurisdictional prerequisites and conditions precedent to commencement and prosecution of this litigation.

CAUSE OF ACTION

6. Plaintiff BRENDA SANTOS would show the Court that on or about May 14, 2019, she was driving her 2007 Dodge Charger and was yielded on Loop 480 merging onto FM 1021 in Eagle Pass, Texas. Minor Plaintiff N.S., A MINOR CHILD was a passenger in the vehicle with Plaintiff BRENDA SANTOS. A United States vehicle, operated by Henry J. Nolan, was also traveling westbound behind the Plaintiff's vehicle and filed to control the speed of his vehicle and caused collision with Plaintiff's vehicle. On said date, Henry J. Nolan struck

Plaintiff's vehicle on the rear end. Henry J. Nolan failed to keep an assured clear distance between his vehicle and the Plaintiff's vehicle and failed to control the speed of the vehicle he was driving. At the time of the collision, Henry J. Nolan was in the course and scope of his duties for the UNITED STATES OF AMERICA, Specifically United States Marshals Service. In causing the collision of the vehicles involved, Henry J. Nolan was guilty of various acts or omissions which constitute negligence as enumerated below, each of which constitutes a proximate cause of Plaintiffs' injuries and damages, to wit:

- a. In failing to keep a proper lookout for other traffic as a reasonable and prudent person would have done under the same or similar circumstances;
- b. In failing to make a timely application of his brakes;
- c. In failing to take proper evasive action in order to avoid the collision;
- d. In failing to maintain proper control of his vehicle; and
- e. In failing to keep an assured clear distance between his vehicle and the Plaintiffs' vehicle, in violation of Texas Transportation Code §545.062.

FEDERAL TORT CLAIMS ACT

7. This case is commenced and prosecuted against the United States of America pursuant to and in compliance with 28 U.S.C §2671-2680, commonly referred to as the "Federal Tort Claims Act." Under the Federal Tort Claims Act, including 28 U.S.C. §§2674 and 1346(b), and under the laws of the State of Texas, the Defendant UNITED STATES OF AMERICA would be liable to the Plaintiffs for their personal injuries and loss of property caused through the negligent or wrongful act(s) or omission(s) of its employee, Henry J. Nolan, committed while acting within the scope of his office or employment with the Defendant.

DAMAGES

8. Plaintiff BRENDA SANTOS, would show that as a proximate cause of the aforesaid negligence of the above-named Defendant, she sustained injuries to his spine, neck, and she has suffered physical pain and mental anguish in the past and in all reasonable probabilities will continue to so suffer in the future; she has suffered physical impairment in the past and in all reasonable probabilities will continue to so suffer in the future; she has suffered impairment to earning capacity in the past and in all reasonable probability continue to suffer a loss of wage earning capacity in the future.

9. Plaintiff BRENDA SANTOS would show that as a result of the accident, she sustained bodily injuries to her shoulder, lower back, neck, and shoulders. As a result of such trauma, BRENDA SANTOS has suffered physical pain and mental anguish and in reasonable probability will continue to so suffer in the future; and in reasonable probability, she will suffer a loss of wage-earning capacity in the future. Plaintiff would further show that because of the conduct of the above-named Defendant, she sustained property damages to her 2007 Dodge Charger in the total amount of Four Thousand and One Hundred and Thirty-Three Dollars with Forty Cents (**\$4,133.40**). Plaintiff BRENDA SANTOS has incurred reasonable and necessary medical expenses for her proper treatment and in reasonable probability will incur additional medical expenses in the future. All the aforementioned damages of BRENDA SANTOS for her proper treatment are in a total amount of Fifty-Four Thousand and One Hundred and Thirty-Three Dollars with Forty Cents (**\$50,4133.40**) for which she sues.

10. Plaintiff BRENDA SANTOS as Next Friend of N.S., A MINOR CHILD, has sustained bodily injuries to her shoulder, lower back, neck, and shoulders. As a result of such trauma, BRENDA SANTOS as Next Friend of N.S., A MINOR CHILD, has suffered physical

pain and mental anguish and in reasonable probability will continue to so suffer in the future however as a result of such trauma, BRENDA SANTOS as Next Friend of N.S., A MINOR CHILD, has suffered physical pain and mental anguish and in reasonable probability will continue to so suffer in the future. All the damages of for her proper treatment of her daughter N.S., are in a total amount of Fifty Thousand Dollars and No Cents (**\$50,000.00**) for which she sues.

11. Plaintiffs further allege that they are entitled to recover prejudgment and post-judgment interest as provided by law.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendant be served with citation and required to appear and answer this petition, that upon final hearing hereof, Plaintiffs have judgment against the Defendant, for Plaintiffs' damages as alleged herein, for costs of court and for such other and further relief, both general and special, at law and in equity, to which the Plaintiffs may be justly entitled.

Respectfully submitted,

GONZALEZ AND ASSOCIATES, P.C.

“/s/” Angel Hector Gonzalez

Angel Hector Gonzalez

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ATTORNEY IN CHARGE FOR PLAINTIFFS